IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

OP.No. 16264 of 1996(J)

PETITIONER:

P. BALACHANDRAN PARAKKATTIL, EXCISE INSPECTOR, EXCISE RANGE OFFICE, KUZHALMANNAM, PALAKKAD.

BY ADV. SRI.E.SUBRAMANI (SR.)
S.EASWARAN

RESPONDENTS:

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1. STATE OF KERALA, REP. BY CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE BOARD OF REVENUE (EXCISE), THIRUVANANTHAPURAM, REP. BY ITS SECRETARY.

3. P.A. MOHAMMED SALIM, CIRCLE INSPECTOR OF EXCISE, EXCISE DIVISION OFFICE, OFFICE OF THE ASSISTANT COMMISSIONER OF EXCISE, THRISSUR.

4. JOHNY PEREIRA,CIRCLE ISPECTOR OF EXCISE, KOTTAYAM.

5. K.S. KESAVAN, CIRCLE INSPECTOR OF EXCISE, VAIKOM.

6. M.P. MONY,CIRCLE INSPECTOR OF EXCISE, SPECIAL SQUD, KASARAGOD.

7. K. ANIRUDHAN, CIRCLE INSPECTOR OF EXCISE, ALAPPUZHA.

8. K.C. BHARATHAN, CIRCLE INSPECTOR OF EXCISE, EXCISE CIRCLE OFFICE, KANNUR.

9. T.R. VENUGOPALAN NAIR, CIRCLE INSPECTOR OF EXCISE, THIRUVANANTHAPURAM.

10. C.H. OOMMEN, CIRCLE INSPECTOR OF EXCISE, CONTROL ROOM, KOZHIKDE.

11. THE DEPARTMENTAL PROMOTION COMMITTEE (LOWER), REP. BY ITS CONVENER, SECRETARY (EXCISE), BOARD OF REVENUE,

THIRUVANANTHAPURAM.

RESPONDENTS 4, 8 AND 9 ARE STRUCK OFF FROM THE PARTY ARRAY AS PEREIRA ORDER DT. 9-3-1999 IN C.M.P.9863/1999.

BY ADV. SRI.K.RAMAKUMAR
GOVERNMENT PLEADER SHRI. SURARSHAN
SRI.B.REGHUNADHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF NOTIFICATION DT. 18-7-1996.

EXT.P2 NOTIFICATION ISSUED BY P.S.C.

EXT.P3 DO. DO. DATED 26TH APRIL, 1983.

EXT.P4 DO. DT. 4TH OCTOBER, 1983.

EXT.P5 DO. DT. 8TH MAY, 1984.

EXT.P6 DO. DT. 13TH NOVEMBER, 1984.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 16264 of 1996

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Dated this, the 16th January, 2007.

J U D G M E N T

Petitioner has approached this Court with a grievance that although he was eligible to be considered for inclusion in the select list for the year 1984 for promotion to the post of Excise Inspectors, he was not so included. The explanation given by the Government for non-consideration of the petitioner for inclusion in the 1984 select list was that he was too junior among the persons who were eligible to be considered and since others senior to him were considered and included in the list, the petitioner was excluded. But the petitioner has filed a reply affidavit in which he categorically asserts that respondents 3 to 10 who were actually included in the list were not eligible to be included in the select list because at the relevant time, they did not have the obligatory test qualification prescribed for eligibility for promotion to the post of Excise Inspector. This obligatory test qualification was introduced as an eligibility qualification as per G.O(P) No. 36/82/TD dated 14-5-1982 as per which, for promotion to the post of Excise Inspectors, a pass in obligatory test in District Office Manual or Manual of Office Procedure were made mandatory. However, by a Note to Rule 6 of Excise and Prohibition Subordinate Service Rules, the existing Preventive Officers were given time to pass the test. As per the said Note, they should have passed the test within two years or within four chances from the date of issue of the order, which is 14-5-1982. Originally, in the counter affidavit stated to have been filed by the State, which is not available in the files, but copy of which has been made available for perusal, the contention was that respondents 3 to 10 had in fact passed the obligatory test within the four chances. However, the petitioner along with his reply affidavit produced copies of Gazette notifications by which the results of five departmental tests

were published by the Kerala Public Service Commission. Relying on the same, the petitioner would submit that after publication of the Government Order dated 14-5-1982 making the obligatory test an an eligibility condition for promotion, five departmental tests were conducted and respondents 3 to 10 passed the test only in the 5th chance after the date of the order and therefore for inclusion in the select list for 1984, respondents 3 to 10 were not eligible. Yesterday, an affidavit has been filed on behalf of the respondents wherein the State has tried to give a different explanation for inclusion of respondents 3 to 10 in the select list for 1984. Although G.O(P) No. 36/82 was issued on 14-5-1982, it was actually notified in the Gazette only on 6-7-1982. The notification of the PSC to which Ext. P2 relates was issued on 27-4-1982 and the last day for submission of the application for the post was 9-6-1982. Since the Government Order was notified in the Gazette on 6-7-1982, the officers could not have applied for that test since the last date for submission of application was 9-6-1982. On that reasoning, they would submit that the test which respondents 3 to 10 passed was in the 4th chance and therefore they were eligible for consideration for inclusion in the select list for the year 1984.

2. But the learned counsel for the petitioner points out that this contention would not hold water because the Note to Rule 6 of the Special Rules states that the two years or four chances given to the officers were from the date of issue of the orders, which is 14-5-1982 and since the last date for submission of application relating to Ext. P2 result was 9-6-1982, they should be taken as the first chance available to respondents 3 to 10 for passing the obligatory departmental test.

3. I have considered the rival contentions in detail.

4. Now, the only question requires to be decided by me is as to

whether respondents 3 to 10 have passed the obligatory departmental test within the four chances available to them from the date of issue of the orders making a pass in the obligatory departmental test as an eligibility condition for consideration for promotion to the post of Excise Inspectors. Admittedly, G.O(P) No. 36/82/TD was issued on 14-5-1982. Note to Rule 6 of the Special Rules reads thus:

> "Note:- Two years or four chances shall be given for the officers to pass the Departmental Tests viz. Manual of Office Procedure or District Office Manual from the date of issue of the orders."

This note specifically states that the four chances given to the Excise Preventive Officers in service are from the date of issue of the orders. If that is taken as the date, then the result in respect of which was published by Ext. P2 is certainly the first chance available to respondents 3 to 10 to secure the test qualification, since the last date for submission of application in respect of that test was admittedly 9-6-1982, which was subsequent to the date of issue of G.O(P) No. 36/82 dated 14-5-1982. I am not inclined to accept the contention taken in the affidavit dated 15-1-2006 filed on behalf of respondents 1 and 2 that the four chances have to be calculated from the date of the notification of the Government Order in the Gazette, namely, 6-7-1982. That is not what is stated in the Special Rules. The Special Rules specifically state that four chances is from the date of issue of the orders, which evidently is 14-5-1982. That being so, clearly, respondents 3 to 10 have passed the obligatory test only in the 5th chance. Therefore, they could have been considered for inclusion in the select list only subsequent to passing of their test and not in the 1984 select list. If they are excluded from the field of choice, then, certainly the petitioner would be entitled to be considered for inclusion in the 1984 select list, which fact has not been disputed in the affidavit. That being so, I am of opinion that the petitioner should

have been considered for inclusion in the select list for the year 1984.

5. It is submitted before me that respondents 3 to 10 are no longer in service, they having retired from service on superannuation. However, since the petitioner has not been considered for inclusion in the 1984 select list, although he was eligible, for no fault of his, I am of opinion that since he was actually entitled to be considered inclusion in the 1984 select list, he should be given notional benefits of fixation of pay on that basis, if found suitable otherwise. In the above circumstances, the original petition is disposed of with the following directions.

A Review Departmental Promotion Committee constituted for the purpose shall consider the case of the petitioner for inclusion in the 1984 select list on the basis that respondents 3 to 10 were not eligible to be considered to be included in the 1984 select list. If he is found to be entitled to be included in the select list for 1984, he should be given promotion with effect from the date when the vacancy relating to 1984 select list arose and he should be given notional fixation in the promoted post with effect from that date and all further dates of promotion of the petitioner shall also be revised accordingly. However, I make it clear that the petitioner would not be entitled to monetary benefits arising therefrom till today. The entire exercise shall be completed before the petitioner retires from service on 28-2-2007.

Sd/- S. Siri Jagan, Judge.

Tds/